

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE  
ADMINISTRATIVE CIVIL LIABILITY  
COMPLAINT NO. R2-2008-0024**

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE-  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R2-2008-0024 (the "Agreement") is made and entered into by West Coast Aggregates, Inc. ("West Coast"), and the Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region ("Water Board"), (collectively, the "Parties") with reference to the following facts:

**RECITALS:**

- A. On or about April 14, 2008, the Assistant Executive Officer of the Water Board issued Administrative Civil Liability Complaint No. R2-2008-0024 ("Complaint"), which proposed to assess an administrative civil liability of \$240,000 against West Coast for certain alleged violations of the California Water Code, the San Francisco Bay Basin Water Quality Control Plan ("Basin Plan"), and the Industrial Storm Water General Permit Order No. 97-030DWQ, NPDES No. CAS000001 ("General Permit"), at West Coast's quarry in San Mateo County, east of the City of Half Moon Bay.
- B. The Complaint alleged that West Coast discharged 18,000 gallons of untreated wash water from the quarry's wash plant into Nuff Creek, a tributary of Pilarcitos Creek, thereby violating the Water Code and the Basin Plan. It also alleged that West Coast violated its General Permit by failing to have an adequate storm water pollution prevention plan, failing to have it on-site, and failing to properly train personnel on stormwater management requirements.
- C. West Coast objected to the allegations in the Complaint, and the Parties conferred for the purpose of settling the Complaint without a formal hearing. Through their respective representatives, the Parties have reached this settlement of the allegations in the Complaint. West Coast enters into this Agreement without the admission of any fact or the adjudication of any issue in this matter, and by entering into this Agreement West Coast is not admitting to liability for any of the alleged violations.
- D. This settlement is subject to public comment as provided below.
- E. The general terms of the settlement are that West Coast will, in exchange for a full and final release of all claims arising out of the specified alleged violations in the Complaint, (1) fund and cause the completion of the Pilarcitos Lagoon Habitat Enhancement Opportunity Project Supplemental Environmental Project (the "SEP") at a cost of \$160,000 in accordance with the specific terms and conditions detailed in Attachment A, which is attached hereto and incorporated into this Agreement, and (2) pay an administrative civil liability of \$30,000 to the State Water Resources Control Board's Cleanup and Abatement Account.
- F. As a material condition of this Agreement, West Coast represents and warrants that the SEP is not and was not previously contemplated, in whole or in part, by West Coast or any related entity for any other purpose, except to partially satisfy West Coast's obligations as may be ordered in response to the Complaint, and that the SEP would not be

undertaken by West Coast or any related entity in the absence of Complaint. West Coast also affirms that, to the best of its knowledge, West Coast, its officers, directors, shareholders, and their family members, will not receive any direct or indirect financial benefit from the SEP and will not use the SEP to satisfy any legal obligation other than that in this Agreement.

NOW, THEREFORE, in exchange for their mutual promises and for other good and valuable consideration specified herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. West Coast covenants and agrees that it will not contest or otherwise challenge this Agreement before the Water Board, the State Water Resources Control Board or any court. The Assistant Executive Officer likewise covenants and agrees that he will not contest or otherwise challenge this Agreement before the Water Board, the State Water Resources Control Board or any court, provided that he does not exercise his authority to declare the Agreement to be null and void as the result of public comments, as specifically detailed below.

2. West Coast shall pay \$30,000 to the State Water Resources Control Board's Cleanup and Abatement Account and initiate the SEP within 10 days of receiving written notice from the Assistant Executive Officer that the Agreement is no longer subject to challenge pursuant to Water Code sections 13320 or 13330, or that all such challenges have been resolved. Notwithstanding the foregoing, with respect to the payment obligation only, if the Agreement is not challenged under Water Code sections 13320 and 13330, West Coast shall pay the \$30,000 to the State Water Resources Control Board's Cleanup and Abatement Account in three installments of \$10,000 on December 1, 2008, February 1, 2009, and June 1, 2009. West Coast shall fund and cause the completion of the SEP in accordance with the specific terms and conditions, including the time schedule, detailed in Attachment A.

3. In the event that the SEP is not performed in accordance with the specific terms and conditions, including the time schedule, detailed in Attachment A, for any reason within the reasonable control of West Coast or its agents, West Coast shall provide written notice to the Assistant Executive Officer within five days, and West Coast shall immediately pay an administrative civil liability amount of \$160,000 to the State Water Resources Control Board's Cleanup and Abatement Account upon written demand by the Assistant Executive Officer.

4. In the event that the SEP is not performed in accordance with the specific terms and conditions, including the time schedule, detailed in Attachment A due to circumstances beyond the reasonable control of West Coast and its agents, West Coast shall provide written notice to the Assistant Executive Officer within five days. The final determination as to whether the circumstances were beyond the reasonable control of West Coast and its agents will be made exclusively by the Assistant Executive Officer, after giving West Coast an opportunity to present, either in writing or at a meeting, its position on why the circumstances for non-performance were beyond its reasonable control. Where the Assistant Executive Officer determines that the circumstances were beyond the reasonable control of West Coast, the Parties agree to meet and confer regarding an extension of time to complete the SEP, the selection of an alternate SEP, or the payment of \$160,000, less the value to the public of the work already performed by West Coast toward completing the SEP as determined by the Assistant Executive

Officer, to the Cleanup and Abatement Account. If an extension or alternate SEP is agreed upon, West Coast shall perform the SEP in accordance with the extension or the terms of the agreed-upon alternate SEP, as applicable. If no extension or alternate SEP is agreed upon, West Coast shall immediately pay an administrative civil liability amount of \$160,000, less the value to the public of the work already performed by West Coast toward completing the SEP as determined by the Assistant Executive Officer, to the State Water Resources Control Board's Cleanup and Abatement Account upon written demand by the Assistant Executive Officer.

5. If the payments in Sections 2 and 3 above are not made as required, the Assistant Executive Officer may request that the Regional Water Board or the Executive Officer adopt the Administrative Civil Liability Order contained in Attachment B (the "Order"), which is attached hereto and incorporated into this Agreement. In this event, West Coast covenants and agrees that it will not contest or otherwise challenge the adoption of the Order before the Executive Officer, the Water Board, the State Water Resources Control Board, or any court. The foregoing process and covenant shall also apply to payments not made as required under Section 4 above, except that the Order may be revised to reflect a credit for the value to the public, if any, of the work already performed by West Coast, toward completing the SEP as determined by the Assistant Executive Officer.

6. West Coast and its respective successors and assigns, agents, attorneys, employees, officers, shareholders and representatives hereby release and discharge the Water Board and the State of California, including each and every constituent agency, board, department, office, commission, fund or entity thereof, and successors and assigns, agents, attorneys, employees, officers, shareholders and representatives of the Water Board, the State of California, and each and every constituent of the State of California from any and all claims, demands, actions, causes of action, obligations, damages, penalties, liabilities, debts, losses, interest, costs, or expenses of whatever nature, character, or description, that they may have or claim to have against one another by reason of any matter or omission arising from any cause whatsoever relating to the Complaint or this Agreement.

7. West Coast's complete performance of its obligations under this Agreement shall effect a release and discharge of West Coast and its respective successors and assigns, agents, attorneys, employees, officers, shareholders and representatives by the Water Board from any and all claims, demands, actions, causes of action, obligations, damages, penalties, liabilities, debts, losses, interest, costs, or expenses of whatever nature, character, or description, that it may have or claim to have against West Coast by reason of any matter or omission arising from any cause whatsoever relating to the Complaint and this Agreement. Notwithstanding this section, however, the Water Board expressly reserves its rights under Civil Code section 1542.

8. West Coast agrees that if it or any of its related entities publicizes the SEP or the results of the SEP, it will state in a prominent manner that the SEP is being undertaken as part of the settlement of this enforcement action by the Water Board.

9. Within seven days of execution of this Agreement by the Parties, the Assistant Executive Officer shall publish the availability of the Agreement for the purpose of accepting public comments on the Agreement for a period of 30 days. If the Assistant Executive Officer receives

significant new information that reasonably affects the propriety of entering into this Agreement, the Assistant Executive Officer may unilaterally declare this Agreement null and void. Otherwise, within seven days of the close of the public comment period the Assistant Executive Officer will certify that the public comment period has closed, that all comments have been considered, and that the Assistant Executive Officer has determined that the Agreement is in the best interests of the people of the State of California. West Coast agrees that it may not rescind or otherwise withdraw its approval of the Agreement. The Agreement becomes effective immediately upon the Assistant Executive Officer's certification.

10. The Parties intend that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Agreement, will be adequate. In the event procedural objections are raised prior to this Agreement becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

11. In the event that this Agreement does not take effect, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing for the Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions, except this Agreement, will not be admissible as evidence in the hearing. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to, objections related to prejudice or bias of any of the Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Board Members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting the contested evidentiary hearing.

12. Neither this Agreement nor any payment pursuant to the Agreement shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule or regulation. However, this Agreement and/or any actions or payment pursuant to the Agreement may constitute evidence in actions seeking compliance with this Agreement. This Agreement may be used as evidence of a settlement in any future actions by the Water Board.

13. Each person executing this Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf he or she executes the Agreement.

14. This Agreement shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared this Agreement and any uncertainty and ambiguity shall not be interpreted against anyone party.

15. If any portion of this Agreement is ultimately determined not to be enforceable, the entire Agreement shall become null and void.

16. This Agreement shall not be modified by any of the Parties by oral representation made before or after the execution of this Agreement. All modifications must be in writing and signed by the Parties.

17. Each party to this Agreement shall bear all attorneys' fees and costs arising from that party's own counsel in connection with the matters referred to herein.

18. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

19. This Agreement may be executed as duplicate originals, each of which shall be deemed an original Agreement, and all of which shall constitute one agreement.

20. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set forth below.

**For the California Regional Water Quality Control Board,  
San Francisco Bay Region:**

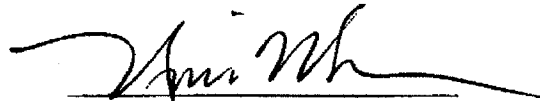
Date: October 9, 2008

By:



Thomas E. Mumley  
Assistant Executive Officer

Approved as to Form:

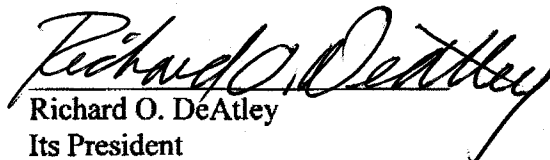


Yuri Wou  
Counsel to Assistant Executive Officer

**For West Coast Aggregates, Inc.:**

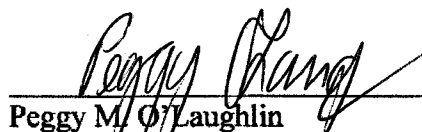
Date: OCTOBER 16, 2008

By:



Richard O. DeAtley  
Its President

Approved as to Form:



Peggy M. O'Laughlin  
Counsel to West Coast Aggregates, Inc.

## **ATTACHMENT A**

### **West Coast Aggregates Supplemental Environmental Project**

#### **Pilarcitos Lagoon Habitat Enhancement Opportunity Project**

##### ***Project Summary***

This project will address two goals: 1) evaluate the controlling factors affecting the morphology and habitat of the Pilarcitos Lagoon and 2) explore the potential for improving adult and smolt fish passage and enhancing habitat conditions at the lagoon. While the primary focus will be on fish species of special concern (steelhead and tidewater goby), the analysis will also consider the potential to benefit or affect other species and communities, particularly other species of concern (e.g., red-legged frog, western snowy plover).

Investigation of the potential opportunities and constraints for restoring or creating a functional lagoon at the mouth of Pilarcitos creek is both essential and timely. Commitments are currently being made by the San Francisco Public Utilities Commission for enhanced flows below Stone Dam. Other opportunities to enhance flows in Pilarcitos Creek are also being explored. The lagoon enhancement opportunity project is closely linked to associated restoration efforts within the watershed being pursued under the umbrella of the Pilarcitos Integrated Watershed Management Plan (IWMP).

##### ***Project Support***

The project has been identified as a preferred project by the Pilarcitos Creek Restoration Workgroup, a group made up of 19 stakeholders in the Pilarcitos Creek Watershed. The workgroup was established through a 2007 Memorandum of Understanding between various state, local, and federal agencies as well non-profit groups seeking to restore the Pilarcitos Creek Watershed. The project has broad support within the workgroup, including the Pilarcitos Creek Advisory Committee, a group that provides local stakeholder input on restoration efforts in the watershed. Restoring the Pilarcitos Lagoon was overwhelmingly supported by the community in a 2005 referendum, and was also recommended in the 1996 Pilarcitos Restoration Plan. The 1996 plan is currently being updated by the Restoration Workgroup, and was originally funded by the California Department of Fish and Game and the San Francisco Bay Regional Water Quality Control Board.

##### ***Project Scope and Goals***

The IWMP articulates six goals that define actions that will combine to achieve its purpose: to promote balanced solutions to effectively manage the Pilarcitos Creek watershed that satisfy environmental, public health, domestic water supply, and economic interests. For each goal, a series of objectives offers more specific guidance about how each goal will be achieved. Together, the goals and objectives provide a foundation for the implementation strategy and plan.

The first goal of the IWMP is to protect and recover Federally-listed steelhead trout and other native species that depend on aquatic and riparian environments by providing habitat sufficient for sustainable population levels. Among the objectives for this goal is the

restoration of functional rearing and feeding habitat to augment the existing rearing habitat. The success and outcome of the IWMP to improve and maintain a sustainable steelhead population will depend on improving summer and fall streamflows, and the restoration of the lagoon.

Lagoons/estuaries provide up to 45% of this important spring and summer rearing habitat and saltwater transition habitat for smolting steelhead (juvenile steelhead migrating to the ocean) in many coastal watersheds. Not only does Pilarcitos Creek normally lack a summer lagoon, it does not provide a spring feeding or salt water transition habitat for smolts. Juvenile steelhead produced in upstream portions of the watershed, probably have minimal transition habitat and low ocean survival.

The IWMP expresses interest in restoring functional estuary conditions in the historic lagoon location. However, this idea has a number of technical challenges that are outlined in the watershed assessment portion of the document. It was determined that overcoming these issues would require a more focused analysis. Consequently, a lagoon restoration feasibility analysis was prioritized in the IWMP and is the basis for this project.

This project will contain four major components:

- 1) Developing an understanding of historic lagoon and coastal conditions and evolution so as to help identify key factors controlling lagoon form and function;
- 2) Evaluating current conditions and seasonal cycles of lagoon functioning at Pilarcitos and in comparison to other central coast watersheds, including terrestrial and aquatic species habitat utilization investigation and assessment;
- 3) Identifying opportunities and constraints for lagoon habitat enhancement, as well as management and regulatory considerations; and
- 4) Formulating draft conceptual enhancement alternatives and assessing of their potential habitat benefits and other anticipated resource and habitat responses.

### ***Project Benefits***

This project will provide the basis for determining what, if any, lagoon fish passage and habitat enhancement approaches have the potential to provide significant benefits for fish or other species of concern and should therefore be considered for future development as a watershed enhancement project.

Specific objectives for lagoon restoration projects will be developed based on a survey of the current condition and limiting factors at the existing site, literature review and research of restoration successes and techniques, conceptual design, and an analysis of practical options for restoration. This survey will develop a timeline and milestones for implementation, project costs, permitting and landowner issues; and develop a monitoring plan and performance measures to track implementation of projects. A Lagoon Subcommittee which is comprised of stakeholders, Federal and state agencies has already been formed to provide guidance and technical oversight for this aspect of the IWMP (see below).

Pilarcitos Restoration Workgroup members are committed to a second phase in which they pursue implementation of these recommendations and recognize this first phase as an essential step toward that end. Workgroup members value that the overall vision of this project is to improve lagoon habitat.

### ***Project Collaborators***

The San Mateo Resource Conservation District (RCD) is responsible for project management, and is responsible for the quality of the project deliverables. Project management includes coordinating the TAC, soliciting and contracting with consultants, managing contracts, working with consultants and the TAC on development of project process and products, participating in committees, and reporting on fund expenditures. The RCD is a non-regulatory public benefit district to help people protect, conserve, and restore natural resources through information, education, and technical assistance programs.

Kellyx Nelson  
San Mateo County Resource Conservation District  
650.712.7765  
[kellyx@sanmateorcd.org](mailto:kellyx@sanmateorcd.org)

The Lagoon Subcommittee of the Pilarcitos Restoration Workgroup will assist the RCD with developing the RFP, selecting consultants, selecting and recruiting TAC members, and review of deliverables. Members are:

Kellyx Nelson (contact information above)  
Jim Salerno  
San Francisco Public Utilities Commission, Division of Natural Resources  
415.554.3207  
[jsalerno@sfwater.org](mailto:jsalerno@sfwater.org)

Joanne Kerbavaz  
California State Parks  
650.726.8805  
[jkerb@parks.ca.gov](mailto:jkerb@parks.ca.gov)

Tim Frahm  
Pilarcitos Creek Advisory Committee  
650.560.0232  
[timfrahm@hotmail.com](mailto:timfrahm@hotmail.com)

George Neillands  
California Dept. of Fish and Game  
707.944.5525

[gneillands@dfg.ca.gov](mailto:gneillands@dfg.ca.gov)  
Patrick Rutten (and other tbd)  
NOAA Restoration Center  
707.575.6059  
[patrick.rutten@noaa.gov](mailto:patrick.rutten@noaa.gov)



The Pilarcitos Restoration Workgroup will support implementation of lagoon restoration projects as well as other projects identified in the IWMP that support estuary function and restoration of the watershed. The Workgroup includes representatives from California Department of Fish and Game, California State Parks, City of Half Moon Bay, Coastside County Water District, Committee for Green Foothills, Midpeninsula Regional Open Space District, National Marine Fisheries Service, Peninsula Open Space Trust, Pilarcitos Creek Advisory Committee, San Francisco Public Utilities Commission, San Mateo County, San Mateo County Farm Bureau, San Mateo County Resource Conservation District, Sewer Authority Mid-Coastside, and Surfrider Foundation - San Mateo.

A Lagoon Technical Advisory Committee (TAC) will be created to guide and contribute expertise to all aspects of the project. It will provide oversight for the design of the research components of the project. The TAC will establish appropriate methodology to determine feasibility of lagoon restoration alternatives. Members of the TAC will include but not be limited to representatives from the federal and state resource agencies responsible for management of the species of concern in this project. The Lagoon Subcommittee is currently developing the TAC. Likely participants include representatives from the National Marine Fisheries Service, the U.S. Geological Survey, and others. Patrick Rutten from NOAA (contact information above) and George Neillands from California Department of Fish and Game (contact information above) are Lagoon Subcommittee members who have committed to participation on the TAC.

### ***Project Timeline***

The project will begin in September 2008 with the initiation of consultant selection and be completed by around January 2010, with submittal of a final project report to Thomas Mumley, Assistant Executive Officer, San Francisco Bay Regional Water Quality Control Board, no later than March 1, 2010. Within that time frame, tasks generally will occur serially, completed as deemed appropriate by the consultants, the Lagoon Subcommittee, and the TAC. Other than the beginning and end dates, the following timeline is approximate to allow the consultants flexibility to develop an appropriate timeline to accomplish the tasks.

- September 2008 - January 2009: *Consultant selection*. If the contract with the consultants is executed earlier than January, they may begin their tasks sooner.
- January 2009 - March 2009 (approximate): *Historical conditions and evolution analysis*.
- March 2009 - August 2009 (approximate): *Current conditions analysis*.
- August 2009 - September 2009 (approximate): *Conceptual model and opportunities and constraints analysis*.
- October 2009 - November 2009 (approximate): *Enhancement alternatives development and assessment*.
- December 2009 - January 2010 (approximate): *Conclude project*.
- Project administration, meetings of the TAC, and meetings of the Lagoon Subcommittee will occur throughout the project.
- March 1, 2010: Project report and presentation.

***Estimated Project Budget***

The study and analysis will require an evaluation of historical and current conditions in order to determine why the lagoon is in its current condition. Seasonal flows, water diversions and watershed discharge need to be evaluated to understand the limiting factors and how to correct them. A comparative review of other lagoon restoration projects is needed to see what techniques have been developed, and to determine what worked and what failed. An understanding of the nearshore ocean transport of sediment and sand needs to be developed, so sand transport can be factored into a restoration design. Design alternatives, permitting and construction will need a number of Federal and state agency review. Performance measures and a monitoring plan need to be developed to determine that the project is achieving its' intended function.

Given this scope of work, it is possible that no additional funds will remain for meaningful on-the-ground restoration work. However, the product of the analysis will give the needed information and direction for the Workgroup to pursue outside grants and funding for this project. None of the Workgroup members will be able to solicit funds or apply for grants without the pre-project development that this project will provide. One of the criteria for consultant selection will be cost-effectiveness of their proposed work. If the selected consultant's bid is for an amount less than budgeted in this SEP proposal, the RCD will propose an additional project or projects in the Pilarcitos watershed for consideration by the Regional Water Quality Control Board. The projected project budget is as follows:

Task 1:	Historical Conditions	\$27,760.00
Task 2:	Current Conditions	\$52,050.00
Task 3:	Conceptual Model/Opportunities and Constraints	\$22,208.00
Task 4:	Enhancement Alternatives development	\$23,596.00
Task 5:	Project Reports by consultant	\$11,786.00
<i>Subtotal:</i>		<i>\$137,400.00</i>
Task 6:	Administration	
	Project Administration (RCD)	\$8,000.00
	TAC stipend	\$5,000.00
	Oversight by SF Estuary Project	\$9,600.00
<i>Subtotal:</i>		<i>\$22,600.00</i>
<b>Total:</b>		<b>\$160,000.00</b>

***Project Deliverables***

Quarterly progress reports to Carol Thornton, San Francisco Estuary Project starting in January 2009 shall include implementation status of the work plan, expenditures to date, and any updates to the schedule.

A final report shall be submitted to Thomas Mumley, Assistant Executive Officer, San Francisco Bay Regional Water Quality Control Board, within 30 days from project completion but no later than March 1, 2010. As described in the proposal, the report shall provide a basis for developing a technically-sound lagoon ecosystem-function enhancement project and shall include a post-project accounting of expenditures.

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**ATTACHMENT B**

**California Regional Water Quality Control Board  
San Francisco Bay Region**

**ORDER NO. R2-2008-00XX  
FOR  
ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF  
WEST COAST AGGREGATES, INC  
SAN MATEO COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the "Water Board") [or Executive Officer under his or her delegated authority] hereby finds that:

1. On April 14, 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R2-2008-024 ("Complaint") to West Coast Aggregates, Inc. ("Discharger"), proposing that the Discharger pay \$240,000 for discharging 18,000 gallons of slurry from Discharger's quarry into Nuff Creek and Pilarcitos Creek in San Mateo County, violating the California Water Code, San Francisco Bay Basin Water Quality Control Plan ("Basin Plan") prohibition against discharging sediment-laden wastewater, and violating Industrial Storm Water General Permit Order No. 97-030DWQ, NPDES No. CAS000001 ("General Permit"). The Complaint provided an option for the Discharger to undertake an approved supplemental environmental project ("SEP") in an amount not to exceed \$210,000 and paying the remainder of the liability to the State Water Resources Control Board's Pollution Cleanup and Abatement Account. The Discharger objected to the allegations in the Complaint.
2. Subsequent to the issuance of the Complaint and the Discharger's objections thereto, the Discharger and the Assistant Executive Officer (collectively, "Parties") entered into settlement negotiations because of a desire to resolve and settle the allegations in the Complaint without an adjudicatory hearing. On [date], the Parties entered into the Settlement Agreement and Mutual Release-Administrative Civil Liability Complaint No. R2-2008-0024 ("Agreement"), under which the Discharger agreed to undertake a SEP costing \$160,000 and paying an administrative civil liability of \$30,000 to the State Water Resources Control Board's Cleanup and Abatement Account.
3. The Agreement was noticed for a 30-day public comment period. The Assistant Executive Officer considered all public comments prior to the Agreement becoming effective. Because of the settlement between the Parties, the Water Board did not conduct an adjudicatory hearing on this matter.
4. Under the Agreement, in the event that the Discharger fails to make the payments required under the Agreement, the Assistant Executive Officer may request that the Water Board or the Executive Officer adopt this Order to facilitate the conversion of the Parties' settlement into a judgment pursuant to California Water Code section 13328.
5. Discharger has failed to make the required payment under the Agreement, and the Assistant Executive Officer seeks the adoption of this Order. Pursuant to the Agreement, the

Discharger, without the admission or adjudication of any fact or claim in this matter, does not contest the adoption of this Order.

6. This action is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321.

**IT IS HEREBY ORDERED THAT:**

1. Pursuant to the Agreement, administrative civil liability under California Water Code section 13385(c) is imposed upon West Coast Aggregates, Inc., in the amount of [\$190,000 less the total of any amount already paid to the Cleanup and Abatement Account and the value to the public of the work already performed by West Coast if the Assistant Executive Officer determines the failure to perform the SEP was beyond the reasonable control of West Coast].

2. Within 30 calendar days of the adoption of this Order, West Coast Aggregates, Inc., shall pay [\$190,000 less the total of any amount already paid to the Cleanup and Abatement Account and the value to the public of the work already performed by West Coast if the Assistant Executive Officer determines the failure to perform the SEP was beyond the reasonable control of West Coast].

3. [If this Order is issued by the Water Board and not the EO:] The Executive Officer is authorized to refer this matter to the Office of the Attorney General for enforcement if Discharger fails to comply with the provisions of this Order.

[Certification or Signature]